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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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11 BETH UCHANSKI,

12 Plaintiff,

13 v.

14 NANCY A. BERRYHILL, Acting  
15 Commissioner of Social Security,

16 Defendant.  
17

Case No. EDCV 17-00843-AFM

**MEMORANDUM OPINION AND  
ORDER AFFIRMING DECISION OF  
COMMISSIONER**

18 Plaintiff filed this action seeking review of the Commissioner's final decision  
19 denying her application for a period of disability and disability insurance benefits. In  
20 accordance with the Court's case management order, the parties have filed  
21 memorandum briefs addressing the merits of the disputed issues. This matter is now  
22 ready for decision.

23 **BACKGROUND**

24 On August 19, 2013, Plaintiff filed an application for a period of disability and  
25 disability insurance benefits, alleging disability beginning May 4, 2012.  
26 (Administrative Record ("AR") 149-150.) Plaintiff's application was denied initially  
27 and on reconsideration. (AR 98-105.) A hearing took place on August 20, 2015  
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1 before an Administrative Law Judge (“ALJ”) at which Plaintiff, her non-attorney  
2 representative, and a vocational expert (“VE”) were present. (AR 46-73.)

3 On November 20, 2015, the ALJ issued a decision finding that Plaintiff  
4 suffered from the following severe impairments: musculoligamentous sprain cervical  
5 spine; overuse syndrome bilateral upper extremities; tendinitis; lateral epicondylitis;  
6 DeQuervain’s tendinitis; carpal tunnel syndrome; cervical C6 radiculopathy; small  
7 disc bulge; disk osteophyte complex; major depressive disorder, single episode; and  
8 personality disorder. (AR 30.) The ALJ determined that Plaintiff retained the  
9 residual functional capacity (“RFC”) to perform a range of light work as defined in  
10 20 C.F.R. § 404.1567(b). (AR 32.) Among the limitations assessed by the ALJ,  
11 Plaintiff is precluded from ladders, ropes, or scaffolds; forceful grasping with her  
12 bilateral hands; and is limited to non-public, simple, and routine tasks. (AR 32.)  
13 Given the foregoing RFC, the ALJ found that Plaintiff was incapable of performing  
14 her past relevant work. (AR 38.) However, based upon the testimony of the VE, the  
15 ALJ found that Plaintiff’s RFC did not prevent her from performing other jobs that  
16 exist in significant numbers in the national economy. (AR 39.) Thus, the ALJ  
17 concluded that Plaintiff was not disabled at any time from May 4, 2012 to the date of  
18 the decision. (AR 40.)

19 The Appeals Council denied Plaintiff’s request for review (AR 1-7), rendering  
20 the ALJ’s decision the final decision of the Commissioner.

### 21 **DISPUTED ISSUES**

- 22 1. Whether the ALJ properly evaluated the medical opinion evidence.
- 23 2. Whether the ALJ properly assessed Plaintiff’s subjective symptom  
24 testimony.

### 25 **STANDARD OF REVIEW**

26 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to  
27 determine whether the Commissioner’s findings are supported by substantial  
28 evidence and whether the proper legal standards were applied. *See Treichler v.*

1 *Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1098 (9th Cir. 2014). Substantial  
2 evidence means “more than a mere scintilla” but less than a preponderance.  
3 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (citing *Robbins v. Soc.*  
4 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)). Substantial evidence is “such  
5 relevant evidence as a reasonable mind might accept as adequate to support a  
6 conclusion.” (*Id.*) This Court must review the “record as a whole, weighing both the  
7 evidence that supports and the evidence that detracts from the Commissioner’s  
8 conclusion.” (*Id.*) Where evidence is susceptible of more than one rational  
9 interpretation, the Commissioner’s decision must be upheld. *See Orn v. Astrue*, 495  
10 F.3d 625, 630 (9th Cir. 2007).

## 11 **DISCUSSION**

### 12 **1. Medical opinion evidence**

13 Plaintiff claims that the ALJ erred in rejecting the opinions of examining  
14 physicians Dr. Nancy Woods and Dr. Myron Nathan regarding Plaintiff’s mental  
15 limitations. (Plaintiff’s Mem. at 2-7.)

#### 16 **a. Dr. Woods**

17 Relying on *Brewes v. Comm’r of Soc. Sec. Admin.*, 682 F.3d 1157, 1162 (9th  
18 Cir. 2012), Plaintiff argues that because the Appeals Council considered additional  
19 evidence (specifically, a mental health evaluation by Dr. Nancy Woods) but denied  
20 review, the Court must also consider this additional evidence in its analysis of the  
21 ALJ’s decision. In *Brewes*, the Ninth Circuit held “that when a claimant submits  
22 evidence for the first time to the Appeals Council, which considers that evidence in  
23 denying review of the ALJ’s decision, the new evidence is part of the administrative  
24 record, which the district court must consider in determining whether the  
25 Commissioner’s decision is supported by substantial evidence.” *Brewes*, 682 F.3d at  
26 1159-60, 1162-63.

27 Here, the record shows no contact by Dr. Woods with Plaintiff before the  
28 ALJ’s November 2015 decision. (*See* AR 823.) Dr. Woods’ first written evaluation

1 of Plaintiff was a December 6, 2016 questionnaire – more than one year after the  
2 ALJ’s decision. (*Id.*) Thus, Dr. Woods assessed Plaintiff’s mental condition after  
3 the relevant period at issue. While Dr. Woods’ report states that Plaintiff’s symptoms  
4 date back to May 4, 2012 (AR 827), it provides no basis for this conclusion. Plaintiff  
5 makes no showing as to how Dr. Woods’ examination in 2016 could undermine the  
6 substantial medical evidence supporting the ALJ’s RFC finding as of November 20,  
7 2015, which includes a comprehensive psychological examination of Plaintiff in  
8 September 2015 by consultative examining physician Dr. Belen. (AR 815-21.)  
9 Moreover, Dr. Woods’ assessment of major depressive disorder does not greatly  
10 differ from Dr. Nathan’s evidence, which the ALJ carefully considered. (*See* AR 35-  
11 38.) Finally, the form of Dr. Woods’ evaluation is generally brief and conclusionary,  
12 which further discounts the weight of this opinion. *See Batson v. Comm’r of Soc.*  
13 *Sec.*, 359 F.3d 1190, 1195 (9th Cir. 2004) (finding that the ALJ did not err when  
14 discounting evidence that was “conclusionary in the form of a check-list” and  
15 therefore lacking in substantive medical findings).

16 Thus, even with consideration of Dr. Woods’ 2016 report, the Court finds that  
17 substantial evidence supports the ALJ’s RFC finding, and Dr. Woods’ report does  
18 provide a basis for reversal of the ALJ’s decision.

19 **b. Dr. Nathan**

20 An ALJ may only reject a treating or examining physician’s uncontradicted  
21 medical opinion based on clear and convincing reasons. *Carmickle v. Comm’r, of*  
22 *Soc. Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2008). If a treating or examining  
23 doctor’s opinion is contradicted by another doctor’s opinion, it may be rejected with  
24 specific and legitimate reasons that are supported by substantial evidence in the  
25 record. (*Id.*) The ALJ satisfies the “substantial evidence” requirement by providing  
26 a “detailed and thorough summary of the facts and conflicting clinical evidence,  
27 stating his interpretation thereof, and making findings.” *Trevizo v. Berryhill*, 871  
28 F.3d 664, 675 (9th Cir. 2017) (citations and internal quotation marks omitted). An

1 ALJ errs if he rejects a medical opinion or gives it little weight “while doing nothing  
2 more than ignoring it, asserting without explanation that another opinion is more  
3 persuasive, or criticizing it with boilerplate language that fails to offer a substantive  
4 basis for his conclusion.” *Garrison*, 759 F.3d at 1012-13 (citations omitted).

5 Dr. Nathan first examined Plaintiff in January 2014. (AR 619.) He conducted  
6 a workers’ compensation psychiatric evaluation and indicated that Plaintiff was  
7 temporarily totally disabled from a psychiatric standpoint. (AR 649.) In May 2014,  
8 Dr. Nathan conducted another psychiatric evaluation and diagnosed Plaintiff with  
9 major depressive disorder, single episode; sibling relational problem; and specific  
10 personality traits or disorders. (AR 579-80.) At the appointment, Plaintiff was neatly  
11 groomed and dressed. (AR 568.) While her mood was depressed and tearful, there  
12 was no evidence of thought disorder or suicidal ideations, and her judgment appeared  
13 satisfactory. (AR 568.) Dr. Nathan reported that Plaintiff appeared to be socially  
14 isolated, spent most of her time in her room, and did not experience much interest in  
15 her daily activities. (AR 583.) Based on his assessment of her emotional state,  
16 Dr. Nathan found that Plaintiff was “precluded from emotional stress.” (AR 584.)<sup>1</sup>  
17 If Plaintiff received treatment, Dr. Nathan found that she would remain “temporarily  
18 totally disabled,” but without treatment, she would be “permanent and stationary” or  
19 permanently disabled. (AR 584, 589.)

20 In December 2014, Dr. Nathan conducted a second workers’ compensation  
21 psychiatric evaluation and reported that Plaintiff claimed she “can’t handle stress,”  
22 cried all day, and most of her daily activities were spent in her bedroom. (AR 691,  
23 709-10.) As Plaintiff had not received treatment, Dr. Nathan concluded that she had  
24 reached her maximum medical improvement. (AR 711.) Plaintiff failed to keep her  
25 scheduled appointment for a psychiatric reevaluation in May 2015, and Dr. Nathan  
26 affirmed his prior impressions. (AR 782.)

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28 <sup>1</sup> The ALJ misattributed this statement to Dr. Mark A. Mandel. (AR 38.)

1 In assessing Plaintiff's mental RFC, the ALJ explicitly addressed Dr. Nathan's  
2 psychiatric evaluations, including the conclusion that Plaintiff was temporarily  
3 totally disabled, permanent and stationary, or permanently disabled. (AR 35, 37, 38.)  
4 Notwithstanding the different meaning of terms of art used in workers' compensation  
5 cases, an ALJ must translate these terms of art into the corresponding Social Security  
6 terminology in order to assess the medical opinion. *See Booth v. Barnhart*, 181  
7 F. Supp. 2d 1099, 1105-06 (C.D. Cal. 2002). Here, the ALJ defined the workers'  
8 compensation terms and found them to have more lenient standards than the Social  
9 Security law requires. (AR 37.) For example, the ALJ defined "permanently  
10 disabled" in the workers' compensation context as a person who is unable to  
11 complete the tasks of his normal work. (AR 37.) In contrast, a claimant is disabled  
12 in the Social Security context if the claimant does not have the RFC to perform the  
13 requirements of her past relevant work *or* any other work considering age, education,  
14 and work experience. (AR 30.) Thus, the ALJ did not merely dismiss Dr. Nathan's  
15 findings as inapplicable in this context but noted that, "[t]he objective clinical and  
16 diagnostic evidence used by the doctor to come to [his] conclusion and included in  
17 the doctor's reports has been considered." (AR 37.) The ALJ also provided a lengthy  
18 summary of Dr. Nathan's observations regarding Plaintiff's mental health. (AR 35.)

19 The ALJ gave little weight to Dr. Nathan's contradicted opinion that Plaintiff  
20 was "precluded from emotional stress" because that opinion was "too broad and  
21 inconsistent with claimant's mental health record." (AR 38.) Generally, a physician's  
22 opinion regarding a claimant's level of impairment may be given less weight if it is  
23 inconsistent with other substantial evidence, so long as the ALJ provides specific and  
24 legitimate reasons for that conclusion. *See Batson*, 359 F.3d at 1195 (an ALJ may  
25 discredit treating physician's opinion that is unsupported by the record or objective  
26 medical findings). In the present case, the ALJ did not provide a boilerplate  
27 statement, but instead gave clear examples of evidence that contradicts Dr. Nathan's  
28 opinion. Specifically, the ALJ noted that Plaintiff was able to testify on her own

1 behalf and adhere to proper hearing room decorum. (AR 38.) The ALJ also pointed  
2 to Plaintiff's ability to obtain treatment for herself, answer questions from medical  
3 professionals, adequately groom herself, and take care of her basic needs during the  
4 day – all of which demonstrated that Plaintiff's emotional limitations were not as  
5 severe as Dr. Nathan opined. (AR 38.) Moreover, the ALJ did not simply dismiss  
6 Dr. Nathan's findings and declare Plaintiff unaffected by stress. Rather, after  
7 considering the differing mental assessments, the ALJ found Plaintiff to have  
8 "moderate difficulty" in handling the usual stresses of gainful employment and  
9 accommodated that by limiting Plaintiff to "non-public, simple and routine tasks."  
10 (AR 32, 38.)

11 For these reasons, the Court concludes that the ALJ properly addressed the  
12 conflicting clinical evidence, and provided specific and legitimate reasons for the  
13 weight given to Dr. Nathan's opinion.

## 14 **2. Plaintiff's subjective complaints**

15 Where a claimant has produced objective medical evidence of an impairment  
16 and there is no affirmative evidence of malingering, an ALJ must provide "specific,  
17 clear and convincing reasons" for rejecting the claimant's testimony regarding the  
18 severity of the symptoms. *See Diedrich v. Berryhill*, 874 F.3d 634, 641 (9th Cir.  
19 2017). The ALJ's findings "must be sufficiently specific to allow a reviewing court  
20 to conclude the adjudicator rejected the claimant's testimony on permissible grounds  
21 and did not arbitrarily discredit a claimant's testimony regarding pain." *Brown-*  
22 *Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir. 2015) (quoting *Bunnell v. Sullivan*, 947  
23 F.2d 341, 345-46 (9th Cir. 1991) (en banc)).

24 The ALJ may consider a variety of factors ordinarily used in assessing  
25 credibility, including the claimant's treatment history or unexplained failure to seek  
26 treatment, the claimant's daily activities, exaggerated complaints, and  
27 inconsistencies in testimony. *See Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir.  
28 2014); *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1221, 1227 (9th Cir.

1 2009); *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002). The ALJ may  
2 also consider conflicts between a claimant's testimony and the objective medical  
3 evidence in the record. *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 600  
4 (9th Cir. 1999); *see generally* 20 C.F.R. § 404.1529 (a) (explaining how pain and  
5 other symptoms are evaluated).

6 Here, the ALJ accurately summarized Plaintiff's allegations regarding her pain  
7 and symptoms as follows:

8 The claimant testified she was unable to work because of work place  
9 injuries to her hands, elbows, neck, and back. She indicated she needed  
10 the assistance of her daughters with meals, cleaning, and laundry. The  
11 claimant noted was unable to hold more than a gallon of milk and often  
12 dropped items; had pressure and pain in her neck; and had difficulty  
13 with her low back into her legs. She stated she was able to walk to her  
14 mailbox and back. Regarding her mental health, the claimant alleged  
15 depression, poor memory, and did not like talking with others. She  
16 reported she was not receiving treatment for her mental health. The  
17 claimant testified she lived with her adult son. She listed her daily  
activities: getting up, taking her medications, isolating herself in her  
room, and warming up meals and eating. She stated she was able to  
shower, watch television, and listen to the radio. The claimant  
acknowledged she was able to occasionally run errands.

18 (AR 33; *see also* AR 49-52, 54-64.)

19 After considering the record evidence, the ALJ found that Plaintiff's claims  
20 "concerning the intensity, persistence, and limiting effects of her symptoms are less  
21 than fully credible." (AR 33.) The ALJ provided several reasons in support of this  
22 determination. First, the ALJ discredited Plaintiff's complaints because he found  
23 them to be inconsistent with the objective medical evidence. (AR 33.) Although  
24 lack of objective medical evidence cannot form the sole basis of a credibility  
25 determination, it is a valid factor for the ALJ to consider. *See Burch v. Barnhart*, 400  
26 F.3d 676, 681 (9th Cir. 2005). Here, the ALJ accurately summarized the objective  
27 medical evidence and concluded that it did not support the severity of Plaintiff's  
28 allegations. (AR 33.) In particular, the ALJ noted normal grip strength in the left



1 and only 10% grip strength loss on the right, no sensory loss in the elbow, and good  
2 strength with some decreased motion in the shoulders. (AR 33.) The ALJ also noted  
3 that Plaintiff's low GAF scores of 42 and 47, which were largely based on Plaintiff's  
4 subjective complaints, were inconsistent with Plaintiff's mental health records. (AR  
5 36.) For example, mental health evaluations indicated that Plaintiff's thought process  
6 and content were normal, her grooming was normal, and she was able to remember  
7 items after a delay and do serial sevens and threes.<sup>2</sup> (AR 36.) In light of the foregoing  
8 record, substantial evidence supported the ALJ's finding on the lack of objective  
9 medical evidence to support Plaintiff's subjective complaints.

10 Second, the ALJ noted that doctors had reported exaggerations by Plaintiff  
11 concerning her limitations and symptoms. (AR 33, 35.) For instance, the ALJ  
12 referred to Dr. Mandel's observation that while Plaintiff complained of pain all of  
13 the time, the pain should more accurately be described as "slight and intermittent"  
14 and perhaps "slight to moderate with extensive use." (AR 33, 717.) In addition, the  
15 ALJ discussed Dr. Nathan's statement that Plaintiff had "magnified and exaggerated  
16 her responses" during the mental health assessment. (AR 35, 575.) Given this  
17 evidence, the ALJ properly considered Plaintiff's exaggerated responses as a clear  
18 and convincing reason for his adverse credibility finding. *See Tonapetyan v. Halter*,  
19 242 F.3d 1144, 1148 (9th Cir. 2001) (exaggeration was a clear and convincing basis  
20 for finding adverse credibility where a claimant was "uncooperative during cognitive  
21 testing" but "much better when giving reasons for being unable to work"); *Orteza v.*  
22 *Shalala*, 50 F.3d 748, 750 (9th Cir. 1994) (affirming ALJ's finding that a claimant  
23 was not credible because the claimant's "complaints of pain and fatigue were  
24 exaggerated").

25 Third, the ALJ referred to Plaintiff's answers in a pain questionnaire, where  
26 Plaintiff indicated that taking medication alleviated her pain symptoms. (AR 33, 50.)

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28 <sup>2</sup> Both test mental functioning. (AR 818.)

1 The fact that Plaintiff's pain was addressed by medication alone (without surgery or  
2 injections) provided another valid basis for discounting Plaintiff's credibility. *See*  
3 *Marsh v. Colvin*, 792 F.3d 1170, 1173 n.2 (9th Cir. 2015) ("routine or conservative"  
4 treatment is a clear and convincing reason for which an ALJ may reject a claimant's  
5 testimony about symptom severity).

6 Finally, the ALJ found that Plaintiff was not receiving treatment for her alleged  
7 mental impairments. (AR 33.) However, Plaintiff also testified that she had  
8 attempted to receive treatment for her mental impairment, but her insurance failed to  
9 provide coverage. (AR 56-57.) Given this reason for Plaintiff's lack of mental health  
10 treatment, the ALJ could not properly rely on that lack of treatment as a valid basis  
11 for the credibility determination. *See Fair v. Bowen*, 885 F.2d 597, 602 (9th Cir.  
12 1989) (an ALJ may not rely on a claimant's "failure to take pain medication where  
13 evidence suggests that the claimant had a good reason for not taking medication");  
14 20 C.F.R. § 404.1530. Nevertheless, the error in this regard was harmless because  
15 of the other clear and convincing reasons discussed above that support the ALJ's  
16 adverse credibility finding. *See Stout v. Comm'r, Soc. Sec. Admin.*, 454 F.3d 1050,  
17 1055 (9th Cir. 2006).

18 IT IS THEREFORE ORDERED that Judgment be rendered affirming the  
19 decision of the Commissioner and dismissing this action with prejudice.  
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21 DATED: 6/19/2018

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23 \_\_\_\_\_  
24 ALEXANDER F. MacKINNON  
25 UNITED STATES MAGISTRATE JUDGE  
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